where minority voters were in control of the Democratic party primary. . . .

* * *

Q. Anything else you recall about that subject that you said?

* * *

A. That if District 24 were eliminated, compensation would have to occur somewhere else in the map for minority opportunities.

* * *

Q. Is it also your understanding that the African-American candidate of choice in that district is consistently elected in the general election?

A. Yes. The Democratic nominee is consistently elected in the general election.

(Jackson Plaintiffs' Ex. No. 140 (Deposition of Keith Gaddie, pp. 12, 16-19, 32. November 22, 2003)).

These remarks by the state's own expert were also noted in the Department of Justice Section 5 Recommendation Memorandum, allowing the DOJ staff to conclude:

> Evidence from all sources indicates that blacks currently constitute a majority of the electorate in the Democratic primary in Benchmark 24. Black voters generally vote cohesively and therefore, can elect the candidate of their choice in the primary. Anglo crossover voting allows black candidates of choice to win consistently in the general election. All experts, including the one retained by the state, agree that black voters control the Democratic primary and can elect their candidate of choice.

(United States Department of Justice "Section 5 Memorandum." Online Posting December 2, 2005. <http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf> at 33-34. December 12, 2003.)

The analysis by nonpartisan voting rights experts at the Department of Justice, as presented in their December 12, 2003 memorandum coupled with the statements by Keith Gaddie, the State's own expert, plainly shows that the 2003 Texas redistricting plan destroyed the 24th Congressional District as an effective minority opportunity district, thus violating the Voting Rights Act. See *Thornburg v. Gingles*, 478 U.S. 30, 67-68 (1986) and *Johnson v. DeGrandy*, 512 U.S. 997, 1006-1009 (1984).

IV. Fort Worth African-American Control Of Congressional Elections Was Dismantled To The Extent That Even If Every Single One Of The Registered Voters In The Heavily African-American Fort Worth Precincts Turned Out To Vote In An Election And All Cast Their Ballots For The Same Candidate Of Choice, That Candidate Would Still Lose.

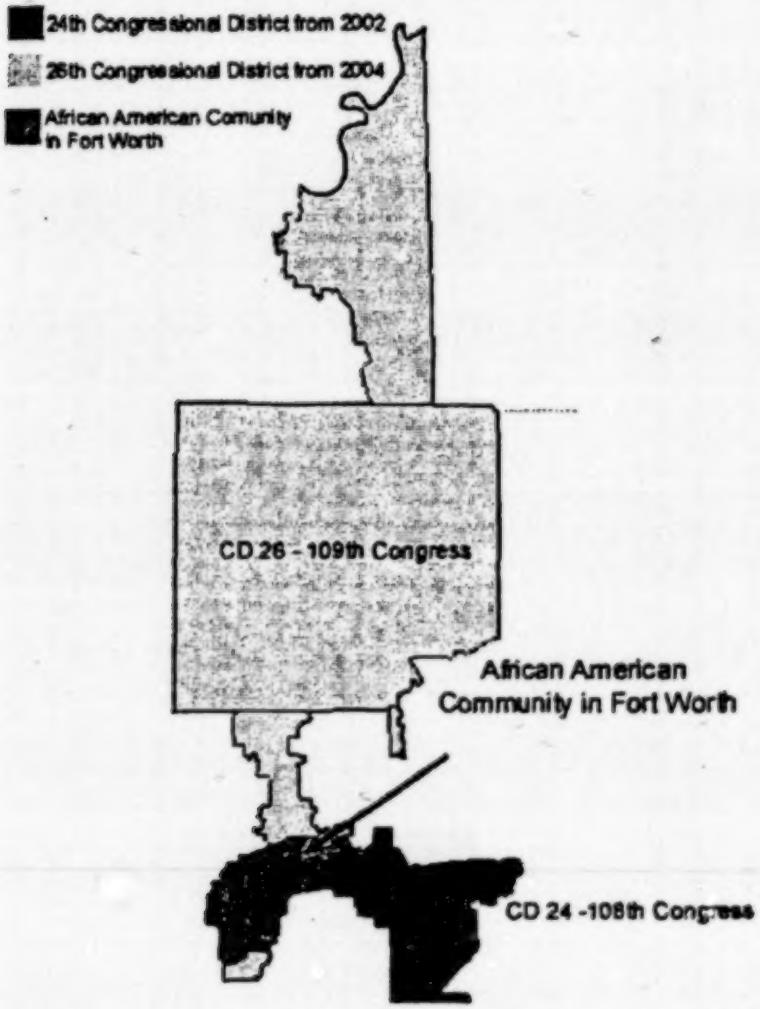
The negative impact upon Fort Worth African-American voters of the 2003 Texas congressional redistricting map can be dramatically demonstrated by analyzing the 2004 congressional results in current Congressional District 26, which now includes the Fort Worth African-American community. While African-American voters in Fort Worth comprised the controlling force in congressional elections in CD24 under the previous plan, their vote had absolutely no impact whatsoever in the 2004 elections under the current plan. In fact, while precincts in Fort Worth from old district 24 gave the 2004 Democratic

nominee in CD26 (see map below) an overwhelming 72.78% of their vote, the Democratic candidate Reyes lost the election to Republican Michael Burgess 33.22% to 66.78%. There was a similar result in the Presidential race. Democrat John Kerry received 71.59% of the vote in the Fort Worth African-American precincts, but Kerry lost district-wide to George Bush 35.4% to 64.6%.

The table below demonstrates the profound loss of voting strength by Fort Worth African-American voters. It shows that even if every single person who is registered to vote in the Fort Worth African-American precincts currently within CD26 but previously within CD24 (80 common precincts) had cast their ballot in 2004 for Democratic candidate Lico Reyes, they still would have failed to elect their candidate of choice. In fact, the Republican candidate for Congress, Michael Burgess, would have received 56.48% of the vote district wide. Additionally, George Bush would have still carried the district over John Kerry 54.83% to 45.17%. In sum, the 2003 redistricting of the congressional districts in Texas eliminated the effective opportunity that African-American voters in Forth Worth had to elect a candidate of their choice. (Table developed from data *available at* www.tlc.state.tx.us)

Texas Legislative Council

(graphic compiled from maps *available at* www.tlc.state.tx.us, shading and labeling added)



Recently, Marc Veasey, the current representative of State District 95, anchored by the African-American community in Fort Worth, spoke on behalf of his constituents by stating, "If every African-American in southeast Fort Worth voted, they would still be overwhelmed by the Denton County voters in the district," (Jeff Mosier, *East FW Is Lined Up vs. GOP's Redistricting Remap Leaves Area At Mercy Of Northern Suburbs, Residents Say*, The Dallas Morning News, December 18, 2005.)

In sum, Congressional district lines were redrawn in Texas in 2003 against the wishes of African-American leaders in Texas and particularly African-American leaders in Fort Worth. Prior to 2003 congressional redistricting, African-American voters in Fort Worth comprised the political core of the 24th Congressional District which nonpartisan analysts at the Department of Justice determined was an effective minority opportunity district. Republican legislative leaders, under pressure from then House Majority Leader Tom DeLay, disregarded concerns about violating the voting rights of minority voters in Fort Worth and enacted a plan that reduced the voting strength of African-Americans in Fort Worth to effectively zero.

Amicus herein, whose membership includes African-American voters in Fort Worth, wonders why CD24, a district in which they had an effective opportunity to elect their preferred candidate, could be dismantled by the Texas Legislature in 2003 because it was not over 50 percent black, when the three-judge court *properly* gave Voting Rights Act protection to other congressional districts in the state (e.g., CDs 18 and 30) that were not majority black.

We respectfully urge this court to conclude that the Texas Legislature illegally and unconstitutionally eliminated the effective minority opportunity district controlled by Fort Worth African-American voters, as well as any meaningful political impact these voters exercised on congressional races. We also respectfully urge the Court to order that the 2003 congressional redistricting plan passed by the Texas Legislature be voided and that the State of Texas be instructed to implement the pre-2003 plan (Plan 1151C) in the upcoming 2006 elections.

CONCLUSION

For the reasons stated above, the judgment below should be reversed.

Respectfully submitted,

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U.S. Congressional District 26 Election Demonstration				
	Votes Outside the 80 Common Precincts cast in 2004 in the 26 CD	All Registered Voters in the 80 Common Precincts vote for the Democrat	Demonstration Totals	
Democratic Candidate	55,840	73,446	129,286	43.52%
Republican Candidate	167,815	0	167,815	56.48%

FOR ARGUMENT.

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IN THE

Supreme Court of the United States

EDDIE JACKSON; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; TRAVIS COUNTY; GI FORUM OF TEXAS,

Appellants,

v.

RICK PERRY, *et al.*,

Appellees.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

BRIEF OF *AMICI CURIAE* ALAN HESLOP, PHD.; ROD ADAIR; GARY BERNER; JOHN A. MORGAN; JOHN B. MORGAN; AND ROBERT WARD IN SUPPORT OF APPELLEES

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INTEREST OF *AMICI CURIAE*

Amici Curiae are academics and/or practitioners with practical experience in the districting phase of the apportionment process. They are all either responsible for, or work with those responsible for, the drafting of district-based representational plans around the nation. Their combined experience covers just about all of the steps of the complex process whereby political power in America is distributed amongst the people. All have been involved, at some level, with districting for both congressional delegations and state legislatures. *Amici* share a concern for fair redistricting and an enlightened role for the courts in this inherently political process.[1]

Amicus **Alan Heslop, PhD.**, is Director Emeritus and Founder of the Rose Institute at Claremont McKenna College, Claremont, California. He was the Rose Professor of State and Local Government at Claremont McKenna from 1967 until 2004 and is now Senior Research Fellow in the School of Politics and Economics at Claremont Graduate University. He has also taught political science at the University of Texas and Texas A&M. One of his major areas of interest at the Rose Institute has been all phases of preparation for, and review of, representational plans. He has been involved with the districting aspects of apportionment for numerous clients over the past four decades in many states from start to finish. He has been an expert witness on redistricting and electoral matters and has served on federal and state commissions.

Amicus **Rod Adair** is President of New Mexico Demographic Research, Roswell, New Mexico and a State Senator. He drafted and reviewed plans for the 2001 legislative and congressional redistricting in New Mexico. He also redistricted county commission and school board districts throughout the state. In 2001 and 2002 he served as an expert witness in New Mexico court cases involving both the congressional and state House of Representatives redistricting.

1. No counsel for a party authored this brief in whole or in part. No monetary contribution toward the preparation or submission of this brief has been made by any person other than *Amici Curiae* and their counsel. By letters filed with the Clerk, counsels for all parties have consented to the filing of this brief.

Amicus **Gary Berner** is Senior Staff member of the House Republican Caucus of the Connecticut General Assembly, Hartford, Connecticut. In addition to his current role as Sr. Policy Advisor to the Minority Leader, he has served as the Caucus's Chief of Staff (1994-2000) and as the Caucus's Redistricting Director (2000-2002). As Redistricting Director, Mr. Berner had responsibility for the preparation, monitoring and oversight of, the districting plans that are considered by the state legislature. This includes plans for both congress and both houses of the General Assembly. Prior to his staff assignments Mr. Berner was twice elected to the Connecticut House of Representatives (1987-1991), and was selected as an Asst. Minority Leader in his second term.

Amici **John A. Morgan** is President, and **John B. Morgan** is Vice-President of Applied Research Coordinates, Ltd., Reston, Virginia. Together they have over forty years of experience with the drafting and review of districting plans for representational entities in over a dozen states. As redistricting practitioners they have worked on and reviewed hundreds of maps and districting plans across the county. This includes plans for congress and state legislatures. They advise legislative caucuses both as to the preparation for districting as well as the post-districting application of campaigns and election support.

Amicus **Bob Ward** is the Minority Leader of the Connecticut House, Hartford, Connecticut. Representative Ward is currently serving in his eleventh elected term and his sixth term as Minority Leader, making him the longest serving legislative leader in modern Connecticut history. He spearheaded the operation of the House Republicans' effort to prepare for, draft, and review the districting plans for congress and the legislature that were considered by the General Assembly following the 2000 census. He served on the Reapportionment Committee, and then was appointed by the Governor to the Reapportionment Commission which adopted the congressional plan.

SUMMARY OF ARGUMENT

The 2004 Texas congressional redistricting plan is not an excessive or egregious partisan gerrymander. As is clear from this Court's partisan gerrymandering jurisprudence, and the briefs of the parties in this appeal, there are many proposed methods for attempting to measure the "partisan fairness" of a districting plan. The undersigned *Amici* seek to assist the Court in its analysis of the 2004 Texas plan by providing the Court with analyses – based upon election results and simple mathematical measures – of Texas congressional plans used in the 2000, 2002 and 2004 elections. These analyses are based upon comparisons of these plans with generally accepted relationships between votes received and seats won. *Amici* explain this seats-votes ratio, which is often depicted in a graph known as the "seats-votes curve," and illustrate how a party winning more than a majority of the votes usually wins a supermajority of the seats due to a "seat bonus." In support of their analyses, *Amici* provide the Court with data from a variety of different elections so that there can be no issue as to whether *Amici* have "cherry picked" election results in order to reach a desired conclusion. Regardless of the analytical method employed, the various election results analyses presented by *Amici* compel a single conclusion: the 2004 Texas congressional plan is more "partisanly fair" than the 2002 plan. As the analysis in the brief shows and the District Court concluded below, the 2004 plan more accurately represents the partisan balance of the state of Texas. The generally accepted seats-votes curve analysis shows that election results under the 2004 plan are closer than those under the 2002 plan to what is expected in a majoritarian congressional districts election system such as ours.

This Court cannot determine that the Texas legislature acted in an invidious manner or in a way unrelated to any legitimate legislative objective unless it is willing to overrule a line of precedents begun with *Gaffney v. Cummings*, 412 U.S. 735 (1973). The state of Texas 2004 congressional districting plan more accurately provides for a distribution of congressional seats based upon relative partisan strength – election results – than the 2002 plan. This Court recognized